

**CIVIL SERVICE COMMISSION MINUTES
SEPTEMBER 6, 2006**

A regular meeting of the Civil Service Commission was held at 2:30 p.m. in Room 358 of the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Francesca Krauel
W. Dale Bailey
Cheryl Fisher
A.Y. Casillas

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
Ellen R. Michaels, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

**Approved
Civil Service Commission
October 4, 2006**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

COMMENTS: Motion by Casillas to approve all items not held for discussion; seconded by Fisher. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)
The Copley Press, Inc. v. Superior Court, Court of
Appeal No. D042251; California Supreme Court No.
S128603

B. Commissioner Casillas: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Fern Steiner, Esq., on behalf of **Robert Insunza**, Building Maintenance Engineer, appealing a Final Order of Suspension and Charges from the Department of General Services.

C. Commissioner Newman: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Julie Buechler, Esq., on behalf of **2006-03**, appealing an Order from the Sheriff's Department.

D. Commissioner Casillas: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Douglas E. Geyman, Esq., on behalf of **Marie Renteria**, Legal Support Assistant I, appealing a Final Order of Demotion in Rank and Charges (from Legal Support Assistant II) from the Office of the District Attorney.

OPEN SESSION AGENDA
County Administration Center, Room 358

MINUTES

1. Approval of the Minutes of the regular meeting of August 2, 2006.

Approved.

CONFIRMATION OF REASSIGNMENT & ASSIGNMENTS

2. Commissioner Newman: Julie Buechler, Esq., on behalf of **2006-03**, appealing an Order from the Sheriff's Department. (Commissioner Fisher was originally assigned.)

Confirmed.

3. Commissioner Bailey: **Melinda Hawkins**, former Human Resource Analyst, appealing a Final Order of Removal and Charges from the Department of Human Resources.

Confirmed.

4. Commissioner Krauel: Scott L. Zielinski, Esq., on behalf of **Macario Buenviaje**, former Human Services Specialist, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

Confirmed.

DISCIPLINES

Appeals

5. Ismael Herrera, SEIU Local 535, on behalf of **Mary Gable**, former Human Services Specialist, appealing a Final Order of Removal and Charges from the Health and Human Services Agency. (Continued from the August 2, 2006 Commission meeting.)

RECOMMENDATION: Deny Request

Prior to the meeting, but subsequent to the posting of this Agenda, staff's recommendation on this item was amended to "approve request". Ismael Herrera, SEIU 535, spoke before the Commission to explain the misunderstanding regarding the late appeal.

Motion by Bailey to approve the amended recommendation to grant a hearing; seconded by Krauel. Carried. Commissioner Fisher assigned.

Findings

6. Commissioner Casillas: Fern Steiner, Esq., on behalf of **Robert Insunza**, Building Maintenance Engineer, appealing a Final Order of Suspension and Charges from the Department of General Services.

FINDINGS & RECOMMENDATIONS:

Employee Robert Insunza, hereinafter referred to as "Employee," is a Building Maintenance Engineer in the Department of General Services who was suspended for three workdays. The Causes set forth in the Final Order of Suspension involve essentially three factual charges: 1) Engaging in excessive personal telephone calls during work time; 2) Failing to reimburse the County for using his County issued cell phone for personal affairs; and 3) Being discourteous to his Supervisor. Employee denied all three allegations. At the Commission hearing, documentary evidence revealed a pattern of cell phone calls by Employee throughout the day to phone numbers bearing no relationship to Employee's work duties. Three employees to whom Employee alleged giving cell phone reimbursement payments denied receiving any such payments. Employee's Supervisor testified that Employee was rude and uncooperative when he questioned him about whether he was using his County cell phone to engage in an unlicensed catering business. Employee claimed that the charges concerning personal phone calls were inaccurate and that he was unfairly singled-out. He testified that he reimbursed the Department for personal phone calls. He denied being discourteous in the meeting with his Supervisor. At the conclusion of the hearing, it was apparent that the quantity and quality of the Department's evidence was superior to Employee's evidence on all of the primary factual charges. For example, all three persons to whom Employee claimed giving his cell phone reimbursements contradicted his testimony. Moreover, Employee claims that at least one of his payments was by check yet he failed to bring any evidence of such payment despite the relative ease of doing so. Accordingly, the Department proved its charges and the level of discipline is not excessive.

All of the charges in the Final Order of Suspension and Causes are proven. Employee is guilty of Cause I, Conduct Unbecoming an Officer or Employee of the County; Cause II,

Discourteous Treatment of the Public or other Employees; Cause III, Failure of Good Behavior; Cause IV, inefficiency; and Cause V, Insubordination. It is therefore recommended that the Final Order of Suspension and Causes be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Krauel. Carried.

7. Commissioner Newman: Julie Buechler, Esq., on behalf of **2006-03**, appealing an Order from the Sheriff's Department.

Prior to the reading of the Findings and Recommendations, Commissioner Krauel stated that for the record she would not be participating in this matter nor on Item No. 8, below. Both employees have employment at the courthouse (or their work affects the courthouse) where her husband is also working. She left the meeting room for Agenda Item Nos. 7 and 8.

FINDINGS & RECOMMENDATIONS:

The matter of the appeal of 2006-03, from a written Order of Discipline from the Sheriff's Department was presented to the Civil Service Commission. The Commission appointed Commissioner Cheryl Fisher, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Subsequently, this case was reassigned to Commissioner Barry I. Newman. Thereafter, the matter was duly noticed and came on for hearing on August 8, 2006. Based on the Findings and Conclusions Commissioner Newman has submitted to the Commission, it is therefore recommended that the Sheriff's Order of Discipline be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Fisher. Carried.

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| AYES: | Newman, Bailey, Fisher, Casillas |
| NOES: | None |
| ABSTENTIONS: | None |
| ABSENT: | None |
| NOT PARTICIPATING: | Krauel |

8. Commissioner Casillas: Douglas E. Geyman, Esq., on behalf of **Marie Renteria**, Legal Support Assistant I, appealing a Final Order of Demotion in Rank and Charges (from Legal Support Assistant II) from the Office of the District Attorney.

FINDINGS & RECOMMENDATIONS:

Appellant Marie Renteria, referred to herein as "Employee," was a Legal Support Assistant II in the Office of the District Attorney, referred to herein as the "Department." She was assigned to the Department's Central Branch office in downtown San Diego. In 2004, the Department began to more fully utilize a computer program that allowed it to track errors to their source. The program traced a disproportionate number of errors to Employee. The period in which these errors occurred loosely corresponded with the period of time in which Employee was burdened with severe personal difficulties involving the dissolution of her marriage and related issues, as well as the illness and ultimate passing of her mother. Employee testified that these matters affected her work performance only "a little." Rather she disputed that her error rate was any greater than her co-workers during that time period. In any case, the testimony at the hearing indicated that her disproportionate error rate began prior to her personal difficulties. Although the Department could not definitively establish that any public safety consequences resulted from her errors, testimony at the Commission hearing demonstrated that public safety consequences were a real possibility. For example, her errors could cause the erroneous release of a suspect or defendant back into the crime victim's community. Accordingly, the Department both proved its factual charges and that the demotion was the appropriate level of discipline. The Department proved all of the charges in the Final Order of Demotion and Charges, except the following: The September 7, 2005 incident referred to in Cause I and the September 27, 2005 incident referred to in Cause II. Employee is guilty of Cause I, Incompetency; and Cause II, Inefficiency. It is therefore recommended that the Final Order of Demotion in Rank and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Bailey. Carried.

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| AYES: | Newman, Bailey, Fisher, Casillas |
| NOES: | None |
| ABSTENTIONS: | None |
| ABSENT: | None |
| NOT PARTICIPATING: | Krauel |

DISCRIMINATION

At the commencement of this meeting, President Newman asked for and received unanimous consent to revise the Agenda to take items 10 and 12 first, and subsequently, items 9 and 11.

Findings

9. Commissioner Krauel: **Alan Landers**, Procurement Contracting Officer, Department of Purchasing and Contracting, alleging gender, race, age and non-job-related factor (Vietnam-era Veteran) discrimination by the Department of Purchasing and Contracting. (See No. 11 below.)

Prior to the reading of the Findings and Recommendations, the Commission heard from Alan Landers, employee; Mr. McLean, on behalf of Mr. Landers; and English Bryant, Sr. Deputy County Counsel.

FINDINGS & RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 21, 2006, the Commission appointed Francesca Krauel to investigate the complaint submitted by Alan Landers, which alleged gender, age, race and non-job-related (Vietnam-era veteran) discrimination by the Department of Purchasing and Contracting. The matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation.

This Investigating Officer has taken into consideration the documentation submitted in this matter. The report of OIA, transmitted to the Civil Service Commission office on July 28, 2006, has been received and reviewed by the undersigned Investigating Officer who disagrees with its conclusions and finds that there is probable cause to conduct a hearing under the provisions of Civil Service Rule VI. It is therefore recommended that Mr. Lander's Rule VI discrimination complaint be pursued and that the matter proceed under the provisions of Civil Service Rule VI; that a hearing officer be assigned to conduct the hearing; that the Petition to Appeal Selection Process (Rule X) be granted

and the hearing held in conjunction with the Rule VI hearing; and that the Commission approve and file this report with the appended OIA Final Investigative Report.

Motion by Krauel to approve findings and recommendations; seconded by Bailey. Carried. Commissioner Krauel assigned.

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| AYES: | Krauel, Bailey, Fisher |
| NOES: | Newman, Casillas |
| ABSTENTIONS: | None |
| ABSENT: | None |

10. Commissioner Krauel: **John McLean**, Procurement Contracting Officer, Department of Purchasing and Contracting, alleging age and gender discrimination by the Department of Purchasing and Contracting. (See No. 12 below.)

Prior to the reading of these Findings and Recommendations, the Commission heard from John McLean, employee; and English Bryant, Sr. Deputy County Counsel.

FINDINGS & RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 15, 2006, the Commission appointed Francesca Krauel to investigate the complaint submitted by John McLean, which alleged age and gender discrimination by the Department of Purchasing and Contracting. The matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. This Investigating Officer has taken into consideration all of the documentation submitted in this matter. The report of OIA, transmitted to the Civil Service Commission office on August 9, 2006, has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that there is probable cause to conduct a hearing under the provisions of Civil Service Rule VI.

It is therefore recommended that Mr. McLean's discrimination complaint be pursued and the matter proceed under the provisions of Civil Service Rule VI; that a hearing officer be assigned to conduct the Rule VI hearing; that the Petition to Appeal Selection Process (Rule X) be granted and that the Rule X hearing be held in conjunction with the Rule VI hearing; and that the Commission approve and file this report with the appended OIA Final Investigative Report.

Motion by Krauel to approve Findings and Recommendations; seconded by Bailey. Carried. Commissioner Krauel assigned.

NOTE: There was discussion whether or not to combine the hearings regarding John McLean and Alan Landers, above. After hearing from several Commissioners, as well as the parties involved, Commissioner Krauel, as the hearing officer, will decide this issue after conferring with all parties prior to the hearing date(s).

SELECTION PROCESS

APPEALS

11. **Alan Landers**, Procurement Contracting Officer, appealing his non-selection for the classification of Senior Procurement Contracting Officer by the Department of Purchasing and Contracting. (Held in abeyance pending the outcome of the above discrimination investigation - see No. 9 above.)

RECOMMENDATION: Take action depending on the outcome of the discrimination investigation.

The Petition to Appeal Section Process was granted and the Rule X hearing will be held in conjunction with the Rule VI hearing granted in item No. 9, above.

12. **John McLean**, Procurement Contracting Officer, appealing his non-selection for the classification of Senior Procurement Contracting Officer by the Department of Purchasing and Contracting. (Held in abeyance pending the outcome of the above discrimination investigation - see No. 10 above.)

RECOMMENDATION: Take action depending on the outcome of the discrimination investigation.

The Petition to Appeal Section Process was granted and the Rule X hearing will be held in conjunction with the Rule VI hearing granted in item No. 10, above.

OTHER MATTERS

Performance Appraisal

13. **Nolan Egemo**, Supervising Human Services Specialist, Health and Human Services Agency, requesting the sealing of a Performance Appraisal for the period May 1, 2005 to April 30, 2006.

RECOMMENDATION: Deny Request

Commissioners Krauel, Newman and Bailey made a point of encouraging the departments not only to do a timely evaluation, but a candid evaluation, as well. Mr. Arauz, Director, DHR, concurred with the Commission and assured that the issue of performance evaluations is a key issue, well supported by the CAO.

**Motion by Krauel to accept staff recommendation;
seconded by Casillas. Carried.**

14. Public Input.

ADJOURNED: 3:50 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

OCTOBER 4, 2006